

IN THE MATTER OF
United States Patent Application No 09/647098
In the name of **Eim ria Pty Limited** and
the **State of Queensland** through the
Department of Primary Industries, and
the **Rural Industries Research**
and Development Corporation

STATUTORY DECLARATION

I, Peter A Stearne, a partner of the firms of Davies Collison Cave, of 10 Barrack Street, Sydney, 2000, Australia, do hereby solemnly declare as follows:

- 1 I am a registered Australian patent attorney and partner of Davies Collison Cave, Patent and Trade Mark Attorneys (hereinafter "my firm").
- 2 My firm were the Australian patent attorneys of Eimeria Pty Limited, The state of Queensland through Department of Primary Industries, and the Rural Industries Research and Development Corporation, who were the applicants of Australian Provisional Patent Application No PP 2683 filed 30 March 1998. A PCT application was subsequently filed based on the invention described in the Australian provisional patent application. This international patent application was filed at the Australian Patent Office on 30 March 1999, and a copy of my firm's transmittal letter to the Australian Patent Office acting as the International Receiving Office, together with a copy of the PCT Request Form is exhibited herewith marked **PAS-1**.
- 3 As set out in the PCT Request Form, exhibited PAS-1, the inventors of the application were David Grant Richards, Wayne Keith Jorgensen and Normal Porter Stewart. My firm dealt with the company Bioproperties Pharmaceuticals Pty Limited, who acted on behalf of the PCT applicants, that is, Eimeria Pty Limited, The State of Queensland through the Department of Primary Industries, and the Rural Industries Research and Development Corporation. I wrote to Mr David Tinworth of Bioproperties Pharmaceuticals Pty Limited on 8 April 1999, informing Mr Richards of the filing of the PCT application. A copy my letter of 8 April 1999 is exhibited herewith marked **PAS-2**.
- 4 As set out in the Exhibit PAS-2, the inventors, named as applicants in respect of the United States designation in the PCT application, were obliged under their contracts of employment to assign their intellectual property rights to their respective employers. Wayne

Keith Jorgensen and Norman Porter Stewart were employees of the State of Queensland through the Department of Primary Industries.

- 5 On 10 May 1999 I wrote Mr Tinworth of Bioproperties Pharmaceuticals Pty Limited advising that it was necessary to file a power of attorney form for signature by their respective applicants of the PCT application, namely Eimeria, the State of Queensland through the Department of Primary Industries, and the Rural Industries Research and Development Corporation, as well as in respect of the United States designation, the inventors, Jorgensen and Stewart. A copy of my letter dated 10 May 1999 is exhibited herewith marked **PAS-3**.
- 6 I was informed by Mr Richards of Bioproperties Pharmaceuticals Pty Limited on 4 August 1999 that one of the inventors, Normal Porter Stewart, had left the State of Queensland through the Department of Primary Industries, and that it would be necessary to send documents separately to him for signature. A copy of my file note in this regard is exhibited herewith marked **PAS-4**.
- 7 On 4 August 1999 I wrote to Mr Stewart enclosing the PCT power of attorney form for signature by him. A copy of my letter dated 4 August 1999 is exhibited herewith marked **PAS-5**.
- 8 On 13 August 1999 I was contacted by Mr Tinworth of Bioproperties Pharmaceuticals Pty Limited to advise that Mr Stewart had telephoned him to say that he would not sign the PCT power of attorney form unless he was 'paid off'. A copy of my file note dated 13 August 1999 with regard to this conversation is exhibited herewith marked **PAS-6**.
- 9 On 19 August 1999 I was contacted by Dr Stewart's legal counsel who advised that Dr Stewart would not sign any documents at all in connection with the PCT application or any application based thereon. The legal counsel of Dr Stewart's stated that his client required the sum of A\$50,000.00 in order to sign the necessary documents and that he would not sign unless he was paid this amount of money. I indicated to Dr Stewart's legal counsel that Dr Stewart was contractually bound through his contract of employment to sign all documents on behalf of his employer, the State of Queensland through the Department of Primary Industries. On that same day I wrote to the Australian Patent Office, acting as the International Receiving Office, on 19 August 1999, and a copy of my letter of this date is exhibited herewith marked **PAS-7**.
- 10 As set out at the second paragraph of page 1 of my 19 August 1999 letter in PAS-7 Dr Stewart, through his legal counsel, sought to extort money in order to sign documents and through his counsel refused to sign any documents in connection with the PCT application, or any application based thereon.

- 11 On 14 September 2000 we instructed Messrs Sughrue Mion Zinn Macpeak & Seas PLLC to enter the United States national phase of PCT/AU99/00232, and a copy of my letter in this regard is exhibited herewith marked **PAS-8**.
- 12 I was provided with a power of attorney and an assignment form by Messrs Sughrue Mion Zinn Macpeak & Seas for signature by the respective inventors, and copies of these forms are exhibited herewith marked **PAS-9**.
- 13 I sent these respective forms to Mr Richards at Bioproperties Pharmaceuticals Pty Limited in my letter of 19 October 2000. A copy of this letter is exhibited herewith marked **PAS-10**.
- 14 A copy of my letter of 28 November 2000 addressed to Mr Kit of Sughrue Mion Zinn Macpeak & Seas in this regard is exhibited herewith marked **PAS-11**. In this exhibit you will note that I have redacted those matters which are confidential.

AND I MAKE this solemn declaration by virtue of the *Statutory Declaration Act 1959* as amended and subject to the penalties provided by the Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true and correct in every particular.

DATED at Sydney this 27th day of April 2001.



DR PETER A STEARNE

BEFORE ME: Ross Heisey

<p>RÖSS M. HEISEY DAVIES COLLISON CAVE 10, 10 BARRACK STREET, SYDNEY 2000 Registered Patent Attorney within the meaning of the Patents Act 1990</p>
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